STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 6, 2011
v	No. 299351 Wayne Circuit Court
CURTIS LEE TATE, Defendant-Appellant.	LC No. 07-009590-FH

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

After a bench trial, defendant Curtis Lee Tate was convicted of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two years' imprisonment for the felony-firearm conviction and to time served for the felon in possession of a firearm conviction. Defendant appeals as of right. We affirm.

I

On the morning of March 29, 2007, private investigators Jason Kupski and Allen Kolehmainen were conducting surveillance on defendant at his home in association with a worker's compensation claim. Their job that day was to follow and record defendant's activities. Just before 10:00 a.m., Kupski and Kolehmainen were parked in separate vehicles in a parking lot on the other side of a field about 100 to 200 yards away from defendant's house.

Kupski testified that he had been conducting surveillance on defendant for about four hours. When defendant came outside, Kupski began videotaping him. Kupski filmed as defendant appeared to hold something in his hand. Defendant twice reached into his pocket. Defendant was "putting something in something." According to Kupski, defendant appeared to be loading a revolver. Kupski testified that he had been in the military and fired a wide range of weapons, so he was familiar with the difference between a revolver and a semiautomatic and how they are loaded. Defendant then got into his car and drove to where Kupski and Kolehmainen were parked. At this time, Kupski stopped filming. Defendant parked his car in such a way as to block Kupski and Kolehmainen into their parking spaces. Kupski testified that after defendant blocked him in, he jumped from the front seat of his car into the backseat to avoid a confrontation with defendant. He admitted on cross-examination, however, that he told the police on April 3, 2007, that he was initially videotaping from his back seat and that he was

still videotaping defendant when defendant drove over to where he was parked. Defendant walked up to the passenger side door of Kupski's car and tried to open it. Defendant then asked Kupski why he was following defendant and stated, "you're gonna get your head blown off." Kupski observed the black handle of a handgun sticking out of defendant's waistband. Kupski stayed where he was. Defendant returned to his car, removed the gun from his waistband, placed it on the front seat, and drove home. Kupski resumed videotaping defendant as he entered his home. Kupski admitted that the video does not capture whatever may have been in defendant's hand. Kupski and Kolehmainen drove to the Dickerson jail and then to the police station to file a report. The video, admitted as evidence at trial, shows defendant making the motions that Kupski described.

Kolehmainen testified that he and Kupski had been following defendant in his car on the morning of the incident. When defendant returned to his residence, he exited his vehicle, walked toward the trunk area, and appeared to remove an item from the trunk. He then walked toward the driver's side door and engaged in the motions that appeared as if he were loading a weapon. Defendant looked up "in between loads," then "put his hands in his waistband," got in his car, and drove to where Kupski and Kolehmainen were parked. Kolehmainen never saw defendant with a gun; however, he turned away when defendant approached Kupski's car and acted like he was reading a newspaper so as not to draw attention to himself. Kolehmainen heard defendant speaking loudly or yelling at Kupski for less than a minute. Then defendant left the scene. Kolehmainen admitted that the video shot by Kupski did not capture defendant going to his trunk, and the police notes of Kolehmainen's August 9, 2007, oral statement do not mention this fact.

On May 6, 2007, the police searched defendant's home and seized a Daisy model 93 pellet gun from an upstairs bedroom. The pellet gun was introduced as evidence at trial but not made available to this Court. Defendant, however, does not dispute the trial court's finding of fact that the pellet gun has silver at the top of the handle and all along the bottom.

The trial court found Kupski to be a believable witness. Given Kupski's service in the military and experience with a variety of weapons, the court found that Kupski saw a black handgun in defendant's possession, not the pellet gun that was later seized from defendant's home. Based on all of the evidence, the trial court convicted defendant of the above charges.

II

On appeal, defendant claims that the verdict was against the great weight of the evidence or, alternatively, was based on insufficient evidence with regard to defendant's possession of a gun. Defendant argues that Kupski and Kolehmainen were not credible witnesses as illustrated by their statements to the police, their testimony, and the videotape. Defendant also argues that Kupski and Kolehmainen had a motive to lie because they were looking for information that would prevent him from recovering his worker's compensation claim. Therefore, defendant insists that the evidence against him, even when viewed in a light most favorable to the prosecution, is speculative and falls short of proving beyond a reasonable doubt that he possessed a gun. We disagree.

In reviewing a great weight of the evidence claim, this Court determines "whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). Conflicting testimony and questions of witness credibility are insufficient grounds for granting a new trial. *People v Lemmon*, 456 Mich 625, 643, 647; 576 NW2d 129 (1998). Exceptions include instances where "testimony contradicts indisputable physical facts or laws," "is patently incredible or defies physical realities," "where a witness's testimony is material and is so inherently implausible that it could not be believed by a reasonable juror," and "where the witnesses[']' testimony has been seriously impeached and the case is marked by uncertainties and discrepancies." *Id.* at 643-644 (citations and quotations omitted).

In reviewing the sufficiency of the evidence, this Court reviews the evidence de novo, in a light most favorable to the prosecution. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). The Court determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id*. at 196.

Under MCL 750.224f, a convicted felon generally may not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm until he has regained this right. See *People v Dupree*, 486 Mich 693, 704-705 & n 12; 788 NW2d 399 (2010). Under MCL 750.227b, the elements of felony-firearm are that the defendant possessed a firearm during either the commission of or an attempt to commit a felony. MCL 750.227b(1); *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). "'Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime.'" *Taylor*, 275 Mich App at 179, quoting *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

Here, defendant has failed to demonstrate that the trial court's verdict, finding him guilty of felon in possession of a firearm and felony-firearm, was contrary to the great weight of the evidence. Kupski testified that he saw defendant make motions that appeared to him to be the loading of a revolver. He also testified that when defendant approached his passenger door, asking why Kupski was following him, defendant stated, "you're gonna get your head blown off." Kupski could see the black handle of a gun in defendant's waistband, and he saw defendant remove the gun from his waistband and place it on the front seat of his car. Kolehmainen testified that he saw defendant appear to take something out of his trunk before engaging in motions that appeared to be the loading of a weapon. Furthermore, the video footage taken by Kupski also captures the hand motions described by Kupski and Kolehmainen. Defendant's great weight of the evidence argument relates to the inconsistencies between Kupski's and Kolehmainen's testimony, the videotape, and their statements to the police. Questions concerning the credibility of witnesses are generally an insufficient ground for a new trial. *Lemmon*, 456 Mich at 643, 647. Nonetheless, the inconsistencies here did not contradict the indisputable facts that Kupski saw defendant with a gun and defendant said Kupski was going to get his "head blown off." Furthermore, Kupski's and Kolehmainen's testimony did not contradict "indisputable physical facts or laws," and it was not "so inherently implausible that it could not be believed by a reasonable juror." *Id.* at 643-644. Thus, we find that the court's verdict was not against the great weight of the evidence.

Moreover, viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to find that defendant possessed a firearm. Thus, because

defendant was a felon in possession of a firearm, he was committing a felony while in possession of a firearm. Therefore, we hold that, when viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's felon in possession of a firearm and felony-firearm convictions.

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause